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TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Docket No.  
HPA-18702/04

In Re Application Of: Nicholas D. McKay Jr, et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/631,300	July 31, 2003	Marc Quemel Jimenez	25006	3726	2627

Invention: ROLLER CONSTRUCTION FOR DETRITUS REMOVAL

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

☒ Applicant claims small entity status. See 37 CFR 1.27

The fee for filing this Appeal Brief is: \$250.00

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
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- ☐ Payment by credit card. Form PTO-2038 is attached.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

  
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Dated: 5/26/05

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Serial No. 10/631,300  
Appeal Brief



Attorney Docket No. HPA-18702/04

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Nicholas D. McKay Jr. et al.

Serial No.: 10/631,300

Group Art Unit: 3726

Filing Date: July 31, 2003

Examiner: Marc Quemel Jimenez

For: ROLLER CONSTRUCTION FOR DETRITUS REMOVAL

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**APPEAL BRIEF**

Mail Stop Appeal Brief  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Responsive to the final Office Action dated February 14, 2005, Applicant appeals the final rejection of claims 1, 3-9 and 12-14 in this application. Attached hereto is Applicant's Notice of Appeal. Applicant further avers as follows:

**I. Real Party in Interest.**

The Evercare Company, a Delaware corporation having offices and a place of business at 3440 Preston Ridge Road, Suite 650, Alpharetta, Georgia 30005-3820, is the real party in interest.

**II. Related Appeals and Interferences.**

None.

**III. Status of Claims.**

Claims 1, 3-9 and 12-14 are pending in this application. Claims 2, 10, 11 and 15-17 have been canceled.

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Applicant appeals from the Patent Examiner's final rejection of all claims pending in this application, namely claims 1, 3-9 and 12-14.

**IV. Status of Amendments.**

All amendments filed in this application have been entered by the Patent Examiner.

**V. Summary of the Invention.**

The present invention relates to an adhesive roller 10 (FIG. 1) for use in removing detritus. The adhesive roller includes an elongated strip 14 (FIG. 3) having a first end 16, a second end 18 and two spaced apart sides 20; see patent specification, page 5, lines 19-20 and FIG. 3.

As best shown in FIG. 2, the elongated strip 14 includes a backing layer 22 and an adhesive layer 24 overlying at least a portion of one side 26 of the backing layer 22; see FIG. 2 and patent specification, page 5, lines 20-23.

The elongated strip 14 is then wound into a tubular and cylindrical roll from its ends 16 and 19 so that the adhesive layer 24 faces outwardly; see FIG. 4 and patent specification, page 6, line 22 – page 7, line 5. Individual sheets are removed from the roll to expose fresh adhesive when necessary; specification, page 7, lines 18-23.

The adhesive roller thus far described is conventional in construction and has been in common use for removing detritus since the 1960s. However, what makes this adhesive roll different from the prior art is that the backing layer 22 is constructed of a compressible foam; see page 6, lines 4-7 of the patent specification. In sharp contrast to this, the prior art adhesive rolls merely use a paper strip which was non-compressible as the backing layer.

A primary advantage of providing a compressible foam as the backing layer for the adhesive is that it allows the roller to conform to non-planar surfaces, such as a tile floor. By

doing so, the compressibility and flexibility of the compressible foam backing layer 24 ensures that the adhesive roller maintains contact with the entire surface of the non-planar surface in order to effectively remove detritus from that surface; see patent specification, page 3, lines 6-11. The Patent Examiner has rejected claims 1, 3-9 and 12-14, i.e. all of the claims in this application, as unpatentably obvious under 35 U.S.C. §103(a) over U.S. Patent Application Publication No. US 2003/0039822 A1 to Aalbers in view of U.S. Patent Application Publication No. US 2001/0005915 A1 to Naghi et al.

**VI. Grouping of the Claims.**

Claims 1, 3-9 and 12-14 stand or fall together. For that reason, only claim 1, i.e. the only independent claim in this application, will be discussed in this brief.

**VII. Argument.**

Claim 1, the only independent claim in this application, is reproduced below:

1. An adhesive roller construction comprising:  
an elongated strip, said strip having a backing layer and adhesive layer overlying one side of said backing layer, said strip having a first end, a second end and two spaced apart sides, said strip being wound from said first end to said second end into a tubular cylindrical roll,  
wherein said backing layer comprises a compressible foam layer.

Claim 1 is simple and short. It clearly defines the adhesive roller as comprising the elongated strip having the backing layer and the adhesive layer which overlies one side of the backing layer. Claim 1 further clearly defines that the strip has a first and second end, two spaced apart sides and that it is wound from its first end and to its second end into a tubular and cylindrical roll.

The last paragraph of claim 1, however, is what differentiates this invention from the prior art adhesive rollers. Specifically, the last paragraph of claim 1 clearly defines that the

backing layer comprises a “compressible foam layer”. As discussed more fully below, the prior art relied upon by the Patent Examiner simply neither teaches nor suggests Applicant’s adhesive roller construction as it is defined in claim 1.

The Patent Examiner, however, has rejected claim 1 with primary reliance upon the Aalbers patent publication. The Aalbers reference admittedly discloses an adhesive roller of the type used for detritus removal. As such, the Aalbers roller includes a backing layer 14 (FIGS. 4A and 4B) coated with an adhesive 16 on one side. Aalbers further discloses that the backing layer 14 may be constructed of polypropylene; see paragraph 82 of Aalbers. Although the Patent Examiner initially took the position that the polypropylene layer 14 of Aalbers constituted a “compressible foam”, the Patent Examiner has since withdrawn that position in paragraph 2 of his final Office Action. Instead, the Patent Examiner now concedes that Aalbers does not specifically teach that the polypropylene backing layer 14 is a foam layer.

In order to meet this deficiency of Aalbers, the Patent Examiner now relies upon the Naghi et al. reference. The Naghi et al. reference merely discloses a device for cleaning a computer mouse which comprises a compressible roller 4 having a plurality of outwardly extending projections; see FIG. 2 of Naghi et al. and paragraph 27 of Naghi et al.

Applicant respectfully submits that the Patent Examiner’s combination of Aalbers with the Naghi et al. reference constitutes nothing other than piecemeal reconstruction of Applicant’s invention based upon hindsight. A rejection under 35 U.S.C. §103 cannot be based upon hindsight obtained through a reading of Applicant’s invention.

More specifically, the Aalbers reference clearly constitutes prior art material to Applicant’s invention. It is the same general type of adhesive roll as Applicant’s invention and is of the type used to remove detritus. The Aalbers reference, however, lacks Applicant’s critical

feature, namely that the backing layer be constructed of a compressible foam. Both the Patent Examiner and Applicant now agree that the Aalbers reference does not teach or suggest an adhesive roller having a compressible backing.

In sharp contrast to this, the Naghi et al. reference discloses a completely different type of cleaning device than either the Aalbers reference or the instant invention. More specifically, Naghi et al. merely describes the compressive material 4 which is rotatably driven by the motor 26 to clean a computer mouse. Unlike both the Applicant's invention and the Aalbers reference, the Naghi et al. cleaning roller is not constructed from an elongated strip which is rolled into a roll so that the adhesive faces outwardly and so that individual sheets can be removed from the roll to expose fresh adhesive. Likewise, individual sheets cannot be removed from the Naghi et al. roller to expose fresh adhesive as required. Indeed, the Naghi et al. reference does not utilize adhesive at all as a cleaning mechanism.

Consequently, Applicant respectfully submits that Patent Examiner, faced with the realization that the Aalbers reference did not teach an adhesive roll having a compressive backing, merely went on a search to find a cleaning device made of a compressible material and found the Naghi et al. reference. However, there is absolutely no motivation in either the Aalbers reference or the Naghi et al. reference to modify the backing layer of Aalbers et al. by substituting the compressive foam material of the Naghi et al. patent. Indeed, since the Aalbers adhesive roller and the Naghi et al. mouse cleaning device are completely different types of cleaning instruments, there is absolutely no reason, and certainly no motivation, for one having ordinary skill in the art of adhesive rollers for detritus removal to even consider the Naghi et al. reference, much less combine the Naghi et al. reference with Aalbers as suggested by the Patent Examiner.

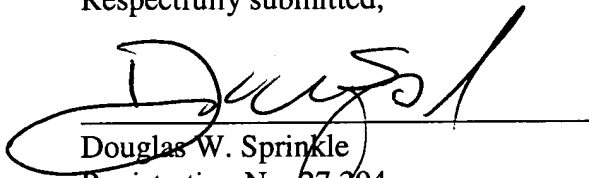
In this regard, Applicant does not claim to be the first to have invented a cleaning device with a compressible layer. Dishwashing sponges have been used for centuries, and such sponges are, by definition, both cleaning devices and compressible. Rather, Applicant merely claims to have invented the adhesive roller with the compressible backing layer that is disclosed in the patent specification and drawing, and clearly and positively defined in claim 1 of the instant application.

**VIII. Conclusion.**

For all the foregoing reasons, Applicant respectfully submits that the Patent Examiner's rejection of claim 1 as unpatentably obvious under 35 U.S.C. §103(a) over the Aalbers reference when combined with Naghi et al. is in error and should be reversed. All remaining claims in this application depend from claim 1 and are, therefore, also allowable.

Such action is respectfully solicited.

Respectfully submitted,



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Anna Vigliani



**APPENDIX A**

**CLAIMS ON APPEAL**

1. An adhesive roller construction comprising:  
  
an elongated strip, said strip having a backing layer and adhesive layer overlying one side of said backing layer, said strip having a first end, a second end and two spaced apart sides, said strip being wound from said first end to said second end into a tubular cylindrical roll,  
  
wherein said backing layer comprises a compressible foam layer.
3. The invention as defined in claim 1 wherein said foam layer comprises a closed-cell foam layer.
4. The invention as defined in claim 1 and comprising a release agent covering at least a portion of the other side of the backing layer.
5. The invention as defined in claim 4 wherein said release agent comprises silicone.
6. The invention as defined in claim 1 and comprising an antimicrobial coating on said one side of said backing layer.
7. The invention as defined in claim 1 and comprising a fragrance coating applied to said backing layer.

8. The invention as defined in claim 1 and comprising an antistatic coating applied to said backing layer.

9. The invention as defined in claim 1 and comprising a plurality of perforation lines extending between said sides of said strip at predetermined intervals therealong, said predetermined interval corresponding substantially to one revolution of said strip around the roll.

12. The invention as defined in claim 1 wherein said backing layer comprises a non-woven electrostatic charge retaining material.

13. The invention as defined in claim 12 wherein said backing layer comprises polyethylene.

14. The invention as defined in claim 1 wherein said backing layer comprises a hydrocarbon gas impregnated foam.